

Franklin Reed Bennett
Attorney at Law
(Utah State Bar # 8734)
fbennett@xmission.com
Telephone: (801) 759-1210 or (801) 733-0700
8647 S. Acorn Lane
Sandy, Utah 84093-2020
Limited Appearance Attorney for Plaintiffs - Lonn Burrows and Jackie Burrows

In the UNITED STATES DISTRICT COURT
DISTRICT OF UTAH
CENTRAL DIVISION
(801) 524-6100
351 So. West Temple
Salt Lake City, Utah 84101

LONN BURROWS and
JACKIE BURROWS,

Plaintiffs,

vs.

LOANLEADERS OF AMERICA
CORP., et. al.,

Defendants.

*
* Civil Action No. 2:14-CV-00544
* DN-BCW
*

*
* **PLAINTIFF'S MOTION**
* **TO STRIKE**
* **THE "NOTICE OF VOLUNTARY**
* **DISMISSAL"**
*

*
* District Court Chief Judge David Nuffer
* Magistrate Judge Brooke C. Wells
*
*
*
*
*
*
*

Motion to Strike

1. Limited Appearance Counsel Franklin Reed Bennett files "*Plaintiff's Motion to Strike the 'Notice of Voluntary Dismissal'*", pursuant to FEDERAL RULES OF CIVIL PROCEDURE, Rule 7(b) and 2015 Local Rule DUCivR 7-1(a)(1).¹

Relief Sought

2. The relief sought by this motion: that this Court enter an order to strike the "*Notice of Voluntary Dismissal*" (case docket entry 74).

The Specific Grounds for the Motion

3. Plaintiffs did not authorize their Attorney of Record to file of the "*Notice of Voluntary Dismissal*".

Other Relevant Facts

4. On 04/28/2016, Plaintiffs' Current Attorney of Record Dwight J. L. Epperson filed a "*Notice of Voluntary Dismissal*" in this case (case docket entry 74).

5. Plaintiffs did not authorize their Current Attorney of Record Dwight J. L. Epperson to file of the "*Notice of Voluntary Dismissal*". See "*Declaration of Plaintiffs Jackie Burrows and Lonn Burrows dated Tuesday, May 10, 2016*", p. 3, ¶¶ 6 and 7.

¹ 2015 Local Rule DUCivR 7-1 MOTIONS AND MEMORANDA, (a) Motions, (1) No Separate Supporting Memorandum for Written Motion, pp. 11-12 .

6. Plaintiffs' Current Attorney of Record Dwight J. L. Epperson previously filed a *"MOTION to Withdraw as Attorney"* on 04/08/2016 (case docket entry 67).

Supporting authority, and argument.

7. The Clients, and not their Current Attorney of Record, have the exclusive authority to decide the ultimate fate of their litigation, including, but not limited to, the manner and timing of any voluntary termination of their case.²

8. [UTAH] SUPREME COURT RULES OF PROFESSIONAL CONDUCT, Chapter 13. Rules of Professional Conduct, Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer, (a) provides

Subject to paragraphs (c) and (d), **a lawyer shall abide by a client's decision concerning the objectives and representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.** A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. **A lawyer shall abide by a client's decision whether to settle a matter.** * * * *

[Bolding added for emphasis.]

9. The filing of a *"Notice of Voluntary Dismissal"* by the Plaintiffs in this case is a terminating action.

² For example, an Attorney of Record does not have the unilateral authority to accept a settlement offer for an Opposing Party without the authorization of the Attorney of Record's Client(s).

Signature of Limited Appearance Counsel

10. Dated and executed this Tuesday, May 10, 2016.

/ s / Franklin Reed Bennett
Franklin Reed Bennett,
Limited Appearance Counsel for Plaintiffs
8647 S. Acorn Lane
Sandy, Utah 84093-2020
fbennett@xmission.com
Telephone: (801) 759-1210 or (801) 733-0700

Post Script: No Proposed Order was Submitted

11. This Motion was not a motion pursuant to 2015 Local Rule DUCivR 7-1(a)(2) ³

12. Consequently, for this motion, (1) no proposed order was attached as an exhibit to the motion and also (2) no email was sent to the chambers of the assigned judge, containing an editable format of a proposed order.

³ 2015 Local Rule DUCivR 7-1 MOTIONS AND MEMORANDA, (a) Motions, (2) Exceptions to Requirement That a Motion Contain Facts and Legal Authority, p. 12 .

Certificate of Service

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

	<p>K. Bradley Carr LAW OFFICES OF JAMES H. WOODALL <i>Attorneys for Defendant Woodall</i> bc@utahtrustee.com 10808 River Front Parkway, Suite 175 South Jordan, Utah 84111</p>	
	<p>R. Samuel Ehlers WRIGHT FINLAY & ZAK LLP <i>Attorneys for Wells Fargo Bank NA</i> <i>(a Delaware Corporation)</i> sehlers@wrightlegal.net blopipero@wrightlegal.net mresnick@wrightlegal.net (720) 475-7978 7785 W. Sahara Avenue, Suite 200 Las Vegas, Nevada 89117</p>	
	<p>R. Samuel Ehlers WRIGHT FINLAY & ZAK, LLP <i>Attorneys for Ocwen Loan Servicing</i> 5532 S. Fort Apache Road, Suite 110 Las Vegas, Nevada 89148</p>	

	<p>Bradley L. Tilt Sara E. Bouley ACTION LAW LLC <i>Attorneys for First American Title</i> brad@actionlawutah.com 2825 E. Cottonwood Pkwy, Suite 500 Salt Lake City, Utah 84121</p>	
	<p>Clint R. Hansen Matthew L. Anderson FABIAN VAN COTT <i>Attorneys for Option One Mortgage</i> <i>(a California Corporation)</i> <i>also known as Sand Canyon</i> chansen@fabianvancott.com smcnett@fabianvancott.com manderson@fabianvancott.com, mbeck@fabianvancott.com (801) 531-8900 215 S. State Street, Suite 1200 Salt Lake City, Utah 84111-2323</p>	
	<p>Christian Martinez James Brody AMERICAN MORTGAGE LAW GROUP, P.C. <i>Attorneys for LoanLeaders of America, Inc.</i> cmartinez@americanmlg.com jbrody@americanmlg.com (415) 878-0030 75 Rowland Way, Suite 350 Novato, California 94945</p>	

	<p>Gerald M. Salcido Jerry Salcido Spencer Salcido SALCIDO LAW FIRM PLLC <i>Attorneys for LoanLeaders of America, Inc.</i> jerry@salcidolaw.com chris@salcidolaw.com info@salcidolaw.com 43 West 9000 South, Suite B Sandy, Utah 84070</p>	
	<p>Attorney Dwight J. L. Epperson Dwight J. L. Epperson Inc. <i>Attorney for Plaintiffs</i> dwightepperson@msn.com 801-359-7771 420 E. South Temple, Suite 470 Salt Lake City, Utah 84111</p>	
<p>In addition, I hereby certify that I served the following non-CM/ECF participants (i.e., the Plaintiffs) by e-mail :</p>		
	<p>Mr. and Mrs. Lonn and Jackie Burrows <i>Plaintiffs</i> jackie6010@yahoo.com 4734 Whisper Pointe Drive St. George, Utah 84790</p>	

Dated and executed this Tuesday, May 10, 2016.

/ s / Franklin Reed Bennett
Franklin Reed Bennett,
Limited Appearance Counsel for Plaintiffs
8647 S. Acorn Lane
Sandy, Utah 84093-2020
fbennett@xmission.com
Telephone: (801) 759-1210 or (801) 733-0700